

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1692 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -

3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

Versus

Appearance:

MR SHANTILAL S SHAH for Respondent No. 1, 2, 3

Date of decision: 21/09/98

By means of this petition, the petitioners sought for directions to the respondents to release the amount of gratuity of Rs. 20,627/- in favour of the petitioners, with interest thereon at the rate of 18% p.a. from the due date till the date of payment.

2 One Jitendrabhai was working as a Head-Clerk in the Bhavnagar Office - DRM (E) EVP, Western Railway at Bhavnagar. Deceased employee Jitendrabhai served the department for 25 years. The petitioners claim to be the legal heirs of deceased Jitendrabhai Bhatt and hence they are entitled to receive the amount of gratuity payable u/s 4 (1) (c) of the Payment of Gratuity Act, 1972. It is not in dispute between the parties that the petitioners are declared legal heirs of deceased Jitendrabhai Bhatt by the Court of Law. Learned counsel

for the Railway submitted that there is specific provision of Rule 702 regarding payment of death-cum-retirement gratuity to the persons entitled to under Rule 702 read with Rule 901 of the Railway Pension Rules, 1950. Rule 702 of the Railway Pension Rules, 1950 reads as under :-

"702 : If a railway servant who dies while in service or who having become eligible for death-cum-retirement gratuity, on retirement, dies before it is actually paid to him, the death-cum-retirement gratuity not exceeding the amount specified in para 702, may be paid to the person or persons on whom the right to receive gratuity is conferred under the Rules in Chapter-IX or if there is no such person, it may be paid in the manner indicated below :

- (i) if there are one or more surviving members of the family as in terms (a), (b) and (c) and (d) of para 901 (1), it may be paid to such members, other than any such member who is widowed daughter, in equal share; and
- (ii) if there are no such surviving members of the family, as referred to in (i) above, but there are one or more surviving widowed daughters and/or one or more surviving members of the family as in items (a), (f), (g), (h) and (i) of para 901 (i) it may be paid to such others members, in equal shares.

NOTE :- (i) The death-cum-retirement gratuity should be paid to the members of the family eligible thereof in terms of the above, in equal share, as has been provided in the Rules even though any of them may voluntarily desire that his or her share may be paid to some other member (s) of the family,

(ii) In case, there is no family member and also the nomination has not been made in favour of any other person or persons, the amount of gratuity will lapse to the Government.

(iii) The eligibility of a person to receive the amount of share of death-cum-retirement gratuity will be determined with reference to the facts they stand on the date of death of railway servant.

Remarriage of widow, marriage of any unmarried daughter, sister, testator, will not affect that entitlement. Share of the members of the family of the deceased railway servant who are alive on the date of government servant dies or become disqualified before receiving the payment shall be distributed equally to the other surviving members of the family.

3. Rule 901 of the Railway Pensions Rules, 1950 defines the family as under :-

"901 - (i) For the purpose of death-cum-retirement gratuity, 'FAMILY' shall include the following relatives of the Railway servant.

(a) Wife, in the case of male railway servant,

(b) Husband, in the case of female railway servant,

(c) Sons (including step children and adopted children).

(d) Unmarried and widowed daughters;

(e) fathers (including adoptive parents in case of individuals whose personal law permits adoption.  
f  
f

(f) mothers

(g) brother below the age of 18 years and unmarried or widowed sisters (including step brothers and step sisters.)

(h) married daughters, and

(i) children of a pre-deceased son."

For the purpose of payment of death-cum-retirement gratuity "business" shall include any Company or Association or petty individuals, who are incorporation or not.

III. Purpose of family pension Section 2 of Chapter VIII family shall include item No. A to G only of Sub-para I above.

Note:- No nomination is necessary for family pension under the Family Pension Scheme for Railway Employee, 1964 under which the pension is payable in accordance with provisions of para 801."

4. Under the provisions of Section 4 of the Payment of Gratuity Act, 1972, payment of gratuity has been directed in the following manner :

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years -

(a) on his superannuation, or

(b) on his retirement or resignation,

or,

(c) on his death or disablement due to accident or disease;

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employer is due to death or disablement;

(Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority)

Explanation - For the purpose of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the

rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year the employer shall pay the gratuity at the rate of seven days' wages for each season.

- (3) The amount of gratuity payable to an employee shall not exceed to 20 months' wages.
- (4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wage for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as to reduced.
- (5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.
- (6) Notwithstanding anything contained in sub-section)1)-
  - (a) the gratuity of an employee, whose service have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
  - (b) the gratuity payable to an employee may be wholly or partially forfeited,
    - (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part,

or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

(7) xxx xxx xxx"

5. According to the learned counsel for the respondents the petitioner no. 1 is the brother's wife. While the petitioner no. 2 is the brother's daughter. Nomination was made by the deceased employee in favour of his mother who died within three months from his death. Hence, the nomination is not applicable in the present case. According to the learned counsel for the respondents, the petitioners are not the family members according to Rule 901. As such they are not entitled for the payment for gratuity. According to the learned counsel for the petitioners, the petitioners are the only heirs and legal representatives and have been declared by the Court of Law and the Court of Law has issued the certificate under which they are entitled for payment of gratuity. There is no other person in the family for the claim.

6. I have gone through the relevant provisions of the Railway Pensions Rules, 1950 and the Payment of Gratuity Act, 1972. No doubt it is mentioned in Rule 901 of the Railway Pension Rules, 1950, that the petitioners do not come within the members of the family of the deceased employee. Section 4 of the Payment of Gratuity Act, 1972, clearly provides that in case of death of employee, gratuity payable to him shall be paid to his nominee or if no nomination has been made, to his heirs, and the Payment of Gratuity Act, 1972 will be applicable to the present case and the provisions of Railway Pension Rules, 1950 will not be applicable as clear provision of law has been provided by the Act, itself regarding payment of gratuity to the legal heirs of the deceased employee in absence of nomination made by deceased employee. So far as, the notes mentioned in Rule 702 as (i), (ii) and (iii), they are not part of the Rule 702. It appears that they have been made by the Publisher in order to explain the provision of the Rule concerned. No doubt, it is mentioned in Note No. (2) that in case there is no family member and also nomination has not been made in favour of any other person, the amount of gratuity lapse to Government. But that provision would not be applicable in the present case on the ground that

Rule 901 of the Railway Pension Rules, 1950 does not exclude the legal heirs for payment of gratuity to the family members if those family members mentioned therein are not available. Section 4 of the Payment of Gratuity Act, 1972 clearly lays down that the persons who are the heirs in absence of any nomination are entitled for the payment of that gratuity amount. The petitioners are the only persons who are entitled for payment of gratuity.

7. Accordingly, the petition is allowed and the respondents are directed to release the amount of gratuity in favour of the petitioners. The Court is informed by the learned counsel for the respondents that the amount of gratuity of Rs. 21,243/- has already been deposited in this Court. That amount of gratuity will be paid to the petitioners, together with interest, if any, within a period of two months. Rule is made absolute, with no order as to costs.

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